

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1310 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MAHOMMAD AKIL MOHAMMAD

YAKUB BANARASI

Versus

STATE OF GUJARAT

Appearance:

MR PS CHAMPANERI for Petitioner

MR PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/11/1999

ORAL JUDGEMENT

#. Leave to amend.

#. The petitioner came to be detained by an order passed by Commissioner of Police, Surat City, dated 7th February, 1999, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short). The grounds of detention indicate that the detaining authority was subjectively

satisfied about the anti-social activities of the petitioner. The petitioner was booked for offences punishable under Sections 366, 368, 506(2), 323 and 114 of Indian Penal Code and Section 5 and 6 of the Prevention of Immoral Trafficking in Women Act. The statements of certain witnesses were also considered by the detaining authority, who refrained from lodging complaint out of fear of the petitioner. The detaining authority considered the possibility of alternative remedy under Section 107 or 110 of the Code of Criminal Procedure and, ultimately, came to conclusion that the detention under PASA Act was the only remedy to prevent the petitioner from involving in anti-social activities.

#. The petitioner has approached this Court with the petition under Article 226 of the Constitution by raising various contentions, one of which being that the detaining authority, while considering the question of detention, has failed to consider the question of possibility of getting the bail cancelled as an alternative and less drastic remedy and, therefore, there is no application of mind, which would vitiate the subjective satisfaction.

#. Hear Mr. Champaneri. He has pressed into service the point of non-consideration by the detaining authority on the aspect of possibility of cancellation of bail. He submitted that the petitioner was on bail when the order was passed. If the detaining authority was aggrieved by the grant of bail to the petitioner, the authority could have considered the question of getting the bail cancelled. This is not done and, therefore, in light of the decision rendered by this Court Letters Patent Appeal No.1056 of 1999 in Special Civil Application No.8650 of 1998, there is non-application of mind by the detaining authority which would vitiate the subjective satisfaction and, therefore, the impugned order may be quashed and set aside.

#. Mr. Patel, learned Assistant Government Pleader has opposed this petition. He submitted that the detaining authority has taken into consideration all relevant aspects. The petitioner was involved in immoral trafficking of women and he was granted anticipatory bail by the Sessions Court. In that situation, in order to prevent the petitioner from engaging himself into such activities, it was necessary to detain the petitioner under the PASA Act. The petition may, therefore, be dismissed.

#. Considering the grounds of detention, it is amply

clear that the petitioner was on bail when the order came to be passed and the detaining authority apprehended petitioner's continuing such illegal activities. However, the detaining authority has not considered the possibility of approaching the Court for cancellation of bail. In this situation, it would be a clear case of non-application of mind as has been held by a Division Bench of this Court in the case of Yunusbhai Hasanbhai Ghanchi v. District Magistrate, in Letters Patent Appeal No.1056 of 1999 decided on 15th September, 1999. The order in question, therefore, suffers from the vice of non-application of mind on part of the detaining authority on this vital aspect and the subjective satisfaction would, therefore, be vitiated. The petition, therefore, deserves to be allowed on this ground alone.

#. In view of the above discussion, the petition is allowed. The order of detention in respect of the petitioner-Mohammadaki Mohammad Yakub Banarasi dated 7th February, 1999 is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

#. It is stated at the Bar by Mr. Champaneri that the petitioner has been now shifted from Porbandar prison to Jamnagar prison on health ground and, therefore, writ should be issued to Jamnagar prison. Order accordingly.

[A.L. DAVE, J.]

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